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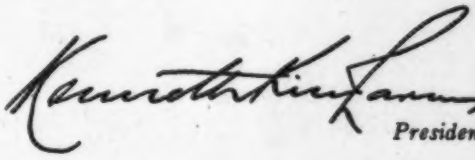
The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

OUR ANSWER TO THE PESSIMISTS

We announce the opening, on April 21, 1931, of an office in Seattle, Washington, better to meet the requirements of our ever increasing lawyer clientele in the great northwestern states and in the mighty western Canadian province on our northern border. This is our twenty-fifth office. In last month's Journal we announced the opening, on April 7, 1931, of our twenty-fourth—our Texas office, at Dallas. That is our answer to the pessimists. Some say prosperity is right around the corner. Well, we are now on the job at the four corners—Portland, Me., Atlanta, Ga., Los Angeles, Calif., and Seattle, Wash.—and at twenty-one intermediate points. It cannot miss us when it comes sweeping around—and we are prepared to help it on its way, wherever that corner may be. 'Tis better to say that it has already turned the corner and we are giving it a boost.

Our new, twenty-fifth, office, on the Pacific slope, is located in the Exchange Building, Seattle, Washington. Mr. Marshall Chandler is in charge. Mr. Chandler, long an experienced member of our staff, was transferred from our Los Angeles office. The Seattle telephone call is Elliott 5962.



President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for June

Talks on Foreign Corporations

A not unusual method employed by corporations in disposing of their product in a foreign state is by consignment. By consignment is meant the shipping of the product to an independent dealer or factor, who sells, apparently by and for his own account, to whom he pleases. The proceeds, less commission or factorage, are transmitted by the consignee to the corporation. In all such cases a restricted title to the product is in the consignee. Where sale on consignment alone is involved the courts have been nearly uniform in holding that such transactions constitute interstate commerce, relieving the foreign corporation from the necessity of qualifying.

A leading case on this subject is that of Butler Brothers v. United States Rubber Company, 156 Federal 1, the decision being by the United States Circuit Court of Appeals. That case involved the consigning of rubber goods to Butler Brothers, a Colorado shoe corporation. The shoe company maintained a place of business from which the goods were sold, bearing all the expense, and any loss, if any, in connection with receiving, storing and selling the goods. The purchasers of the goods from the shoe company were its customers and were liable to it for the purchase price. The shoe company retained a certain amount for its services in the sale of the goods and transmitted the balance to the rubber company. The court held that such transactions constituted interstate commerce and, therefore, qualification was unnecessary.

As stated before, the question of doing business by consignment has been considered by the courts in a number of cases, nearly all of the decisions therein being to the effect that such transactions constitute interstate commerce. However, these decisions apply to strict consignment transactions and not to variations which may perhaps destroy their character as consignment sales. Many times a transaction is called a consignment for want of a better name, when in reality the situation is simply one of the corporation being able to maintain a stock of goods within the state before orders have been taken for the goods. For this reason there is a similarity between Warehouse and Depositary cases (discussed in THE CORPORATION JOURNAL for May, 1931, page 389) and the sale of goods on consignment. Therefore, a foreign corporation conducting its business in such a manner should take care to see that its business is transacted upon a strict consignment basis, as that term is generally employed, and that because of restrictions and variations, the transactions have not become such as to bring the corporation within the meaning of the foreign corporation statutes.

Domestic Corporations

Massachusetts.

Right of holders of non-cumulative preferred stock to unpaid dividends for past years before dividends may be paid to common-stock holders. The contract (charter) here provides for the payment of non-cumulative preferential dividends from net profits or surplus, after paying or setting aside an amount sufficient to pay dividends on superior classes of preferred stock, on a certain class of preferred stock, such dividends to be paid, in the discretion of the Board of Directors, when funds are properly available for the purpose, "without reference to whether any dividends are paid in that year upon the common stock." On the stock in question no dividends were paid for the years 1925 to 1928, both inclusive, though earnings were sufficient, the directors considering it necessary that the funds be plowed back into the business or be added to reserves. Dividends were paid, at the annual rate, for the years 1929 and 1930. For 1930 a dividend on the common stock was declared. Action is to enjoin the payment of any dividends on the common stock until the payment of dividends on the preferred class referred to for the years 1925 to 1928. The Supreme Judicial Court of Massachusetts (Suffolk) dismisses the bill. The court refers to the United States Supreme Court decision in Wabash Railway Co. vs. Barclay, 280 U. S. 197 (THE CORPORATION JOURNAL for February, 1930, page 102), wherein a like claim was denied, says that there are no essential differences between the charter provisions there and here involved, relative to the preference—in each reference is made to the current year for the preference over junior stock, and in each it is non-cumulative, that the Wabash decision must be followed by all other Federal courts, and that it is desirable, so far as reasonably practicable, that there should be harmony of view concerning such a matter in courts exercising jurisdiction within the same state, and, "without further discussion we adopt the decision in Wabash Railway Co. vs. Barclay as decisive of the point here to be decided." Joslin vs. Boston & M. R. Co., 175 N. E. 156. J. T. Pugh and R. E. Joslin, both of Boston, for plaintiff. F. H. Nash, of Boston, for B. & M. R. Co. and its directors. Maxwell E. Foster and J. L. Hall, both of Boston, for Boston Railroad Holding Co. (a holder of a large number of the common shares).

New Jersey.

New Jersey corporation may now sell all or substantially all of its property. Heretofore there has been no statutory provision authorizing a New Jersey corporation to dispose of its entire assets by sale or exchange. Chapter 288, Laws of 1931, approved and effective April 27, 1931, carries authorization for such in the case of ordinary business corporations at least (corporations organized under the "Act concerning corporations" (Revision of 1896), approved April 21, 1896, including those organized under "An Act concerning corporations" (Revision), approved April 7, 1875, except railroad and canal corpora-

tions), in terms as follows: [Every such corporation] "may by action taken at any meeting at its board of directors, sell or exchange all or substantially all of its property and assets, including its good will, upon such terms and conditions and for such considerations, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations as its board of directors shall deem expedient and for the best interests of the corporation, when and as authorized by the affirmative vote of two-thirds in interest of the holders of each class of stock having voting powers on such proposal given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of two-thirds in interest of the holders of each class of stock having voting powers on such proposal." The remainder of the chapter relates to notice, and to appraisal of and payment for the stock of a dissenting stockholder as in the case of a merger.

New York.

Laws relative to corporations in New York, amended. Chapter 655, New York Laws of 1931, effective September 1, 1931, provides for radical amendments to Section 8 of the General Corporation Law and Section 26 of the Executive Law relative to business, transportation and membership corporations in the State of New York. Under the amendment the Secretary of State will make, certify, and transmit to the county clerk of the County in which the office is to be or is located, a copy of every certificate of incorporation or amendment filed with the Department of State. The county clerk is to file and index such copy but will not record it. The fee for filing certificates of incorporation is increased from $30 to $40 and that for amendatory certificates from $20 to $25. The fee for filing a statement and designation and issuing certificate of authority to a foreign corporation is increased from $52 to $100. The law also defines the time when corporate existence shall begin.

Minority stockholders entitled to hearing on contention that their corporation should be dissolved. Here, a director and minority stockholder of a corporation, on behalf of himself and other minority stockholders, is seeking an order compelling dissolution of his corporation. It is alleged that the business is unsuccessful and unprofitable, that the capital has been and is being impaired and the property wasted and dissipated, that unless dissolution is effected such waste and dissipation will continue until the assets are entirely consumed, that the directors are in control of the majority stockholders and are refraining from applying for dissolution for the pecuniary gain of the officers and majority stockholders regardless of the interests of the minority stockholders, that the president, elected through stock control, has had his salary increased from $7,500 to $20,000 though the reasonable value of his services does not exceed $5,000. On appeal from the order of the New York Supreme Court striking out the first and third causes of action (summarized, in part, above) the Appellate Division, First Department, reverses, denying the motion to strike. The court says:

"Bad faith and fraud in refraining from dissolving a corporation may be shown as much to be a breach of duty, as bad faith and fraud in seeking wrongfully to dissolve a corporation. It being proper for the court to act in the one instance [Kavanaugh vs. Kavanaugh Knitting Co., 226 N. Y. 185, 123 N. E. 148, referred to and quoted from], it is proper, also, that it should act in the other." Questions of good faith and fair dealing being involved it is stated that these "should be inquired into by the court." Kroger et al. vs. Jaburg et al., 248 N. Y. S. 387. Gustav Lange, Jr., of New York City, for appellants. Davis, Wagner & Heater, of New York City (Guy C. Heater, of New York City, of counsel; Oscar B. Frazer, of New York City, on the brief), for respondents.

Ohio.

Subscriber on installment plan to stock in corporation, payment not having been completed, is entitled to accounting on consolidation of the corporation with another corporation, and to cancellation of subscription contract. Plaintiff, here petitioning for accounting and equitable relief, subscribed for a number of preferred and common stock shares in The Harvard Mortgage Company, an Ohio corporation, payments to be on the installment plan, stock not to be issued until fully paid for, dividends to be allowed on partial payments. Before contract payments has been completed the corporation by a vote of a sufficient number of shares, but without the plaintiff's consent, consolidated with or merged into another corporation, North American Securities Company, by sale of all the assets of the former to the latter, shareholders in the former to receive in exchange for their shares, shares in the latter, in a certain proportion. On cross petition judgment is prayed for the amount still due on the subscription. The Ohio Court of Appeals, Cuyahoga County, holds that the subscriber, not being a stockholder, payment not having been completed, by the terms of the contract of subscription, does not come within the remedial provisions of the law open to dissenting stockholders in such cases, and, that "The relationship of the parties in this case is in all respects similar to that of the vendor and vendee under a land contract. A trust relationship arises by virtue of it. The Harvard Mortgage Company became a trustee holding whatever interest the plaintiff who is the vendee may have in certain shares of stock, for the benefit of such vendee. As such trustee The Harvard Mortgage Company was bound to the usual obligation to exercise the highest degree of care for the protection of the plaintiff who is a beneficiary under such arrangement." "The action of the company in forcing the plaintiff into a new arrangement which would give her shares of stock for which she had not contracted and the failure of the company to consult the plaintiff relative to her consent or acquiescence in the new arrangement, seems to us a gross disregard of the rights of plaintiff." Examining into the essence of the exchange of stock arrangement the court feels that this is unequitable to plaintiff and that the company "sought to accomplish a shrinkage in her investment which was inexcusable and in our opinion the company was guilty of the grossest kind of negligence and could be held accountable therefor." It follows, says the court, that the defendant, the

North American Securities Company, as successor in interest, assumes the burden; an accounting is ordered, a judgment to be rendered in favor of plaintiff in such amount as is found to be due, and plaintiff is relieved from any further obligation under her subscription contract as by the action of The Harvard Mortgage Company, to the serious injury of the plaintiff, performance of said contract on the part of The Harvard Mortgage Company became impossible. Goodisson vs. North American Securities Company, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 43271 (not yet officially reported). Reuel A. Lang, of Cleveland, for plaintiff. Boer, Arnold & Tobias, of Cleveland, for defendant.

Texas.

Corporation discontinuing business may exercise powers not specifically authorized, in disposing of assets. A Texas company organized for the purpose of "the raising, buying and selling of live stock" and so conducting its affairs over a long period of time, on discontinuing business developed some of its real estate to be disposed of as city lots. Its right to do so, under its charter, was questioned. The United States Circuit Court of Appeals, Fifth Circuit, affirming the judgment of the court below, says, in this regard: "Of course it could not become a real estate dealer in the sense of buying and selling such property generally, but it certainly was entitled to acquire lands for the purpose of carrying on its live stock business, and when this was discontinued, to dispose of them to the best possible advantage. If in the judgment of the directors and stockholders this could be done by dividing it into city lots, we see no reason why this course should not have been followed." Austin vs. Osborne et al., 46 F. (2d) 956. Stanley Boykin and H. C. Ray, both of Fort Worth (Boykin & Ray, of Fort Worth, on the brief), for appellants. Jos. W. Bailey, Jr., of Dallas, Texas, and Wm. J. Berne, of Fort Worth (Bailey, Nickels & Bailey, of Dallas, and Wm. J. Berne, of Fort Worth, on the brief), for appellees.

Foreign Corporations

Connecticut.

On what constitutes "doing business" by an unlicensed foreign corporation for purpose of service of process on it. Action is by a resident of New York against a Delaware corporation, not licensed to do business in Connecticut, brought in Connecticut (state court—transferred to Federal court), on a contract. Process was served on the corporation by delivering a copy to its treasurer, a resident of Connecticut, who is also president of a Connecticut corporation all of the stock of which is owned by the defendant. The treasurer goes to New York once a week to perform there his duties as such; sometimes he makes out checks in Connecticut which, however, are sent to New York for handling. Occasionally defendant has borrowed money from its

Connecticut subsidiary which it has deposited in Connecticut banks for defendant's specific obligations. Defendant ships goods to its subsidiary on orders transmitted by the subsidiary to defendant's New York office; it has no other dealings or contracts with anyone in Connecticut; it solicits no business in the state, owns no real or personal property there, has no bank account there other than the intermittent credits already referred to, and pays no taxes there. Defendant owns stock in twenty-one other companies, similar to its Connecticut subsidiary. The United States District Court, District of Connecticut, dismisses the complaint saying that because of defendant's lack of presence in the state the service of process was invalid. Citing cases, the court says that the treasurer's ex officio activities in the state are not such as to cause the corporation to be "doing business" there, that his residence in the state does not necessarily subject defendant to process there, that the ownership of stock in a local subsidiary is not "doing business" locally (though the nature of the dealings between a parent and a subsidiary may bring the parent into the jurisdiction which obtains over the subsidiary—but such is not the nature of the dealings here), that occasional bank credits do not imply presence. The court says plaintiff is not precluded from the pursuit of his right elsewhere. Hurley vs. Wells-Newton National Corporation, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 42385 (not yet officially reported). Tuttle & Day and William A. Bree, both of New Haven, for plaintiff. Paxton Blair of New York City and James E. Wheeler of New Haven, for defendant.

Federal.

Venue in action against foreign corporation under anti-trust laws. This is an action brought in the United States District Court, District of Massachusetts; by a Massachusetts corporation against a Virginia corporation, licensed to do business in Michigan. but not in Massachusetts, summons having been served in Michigan. Action is to recover damages under the Federal anti-trust laws alleged to have been suffered because of certain acts of defendant. Section 12 of the Clayton Act (Title 15, United States Code, Sec. 22) provides that an action under the anti-trust laws against a corporation may be brought in any district, inter alia, wherein it transacts business. Defendant appeared specially to object to the jurisdiction and its motion to dismiss was granted. On appeal the United States Circuit Court of Appeals reverses and remands the case for trial. Defendant is a manufacturer of automobiles. It employs the common practice of entering into contracts with so-called distributors, contracts being drawn, as the court says, "in terms to avoid, if possible, the obligations of principal and agent." The general plan is well known. The manufacturer retains oversight of the distributor, maintains close contacts with him, gives him advice and assistance, consults with him. Defendant's custom is to send a district manager to Massachusetts to spend several days each month with the distributor there. The Massachusetts distributor and dealers have authority to issue with the sale of each car a warranty binding defendant against defective materials and inferior workmanship. All this, the

court holds, constitutes the transaction of business in Massachusetts within the meaning of the term as used in the anti-trust laws. Jeffrey-Nichols Motor Co. vs. Hupp Motor Car Corporation, 46 F. (2d) 625. Edward C. Park, of Boston, Mass. (Lothrop Withington, of Boston, on the brief), for appellant. Albert A. Schaefer, of Boston (Alexander B. Siegel, of New York City, Ropes, Gray, Boyden & Perkins, of Boston, and Van Vorst, Siegel & Smith, of New York City, on the brief), for appellee.

Maryland.

Action by Delaware corporation against a Pennsylvania corporation, qualified in Maryland, in the United States District Court, District of Maryland. This is an action by a Delaware corporation brought in the United States District Court, District of Maryland, against several defendants one of whom is a Pennsylvania corporation engaged in, and licensed to do, business in Maryland. The question decided, to the extent of present digest purposes, is one of venue —whether or not the action (against the corporation) may be brought in the Maryland district. Jurisdiction is clear because of diversity of citizenship; but that is the sole reason for giving Federal jurisdiction and Section 51 of the Federal Judicial Code, 28 United States Code § 112, provides that where jurisdiction is founded only on the fact that the action is between citizens of different states suit may be brought only in the district of the residence of either the plaintiff or the defendant. Plaintiff, here, contended that as the Pennsylvania corporation was licensed to do business in Maryland it had thereby become a resident of Maryland, had consented to be sued in that state, and was "bound" because of the Maryland foreign corporation law provision relative to a statutory agent on whom process may be served on its behalf. The court grants the motion (of the corporation defendant) to dismiss, saying that it is well settled that for the purposes of the code section here in question "citizen," "inhabitant," and "resident" are synonymous terms and that therefore a corporation is a resident only of the state of its incorporation, and that the statutes of no state may by their provisions cause a complying foreign corporation to be considered as a resident of such state within the meaning of the Federal venue law. Standard Stoker Co., Inc., vs. Lower et al., 46 F. (2d) 678. Semmes, Bower & Semmes, Frederick W. Brune, and Edwin F. A. Morgan, all of Baltimore, and Whitman, Ransom, Coulson & Goetz, of New York City, for complainant. Brown & Critchlow, of Pittsburgh, Pa., and August A. Denhard, of Baltimore, for defendants.

Tennessee.

Contract entered into by unqualified foreign corporation "doing business" in Tennessee is void and suit to enforce may not be maintained in a Federal court. This case was decided some years ago but until now has not appeared in the reporter. A Minnesota corporation, not licensed to do business in Tennessee, entered into a Tennessee contract to supply a certain amount of linseed oil to a Tennessee

tions listed on the great exchanges—such as Radio, Curtis Publishing, Crucible, Otis Elevator, etc.

¶

In convenience—its transfer department located in the very heart of the financial district of New York in spacious, efficient quarters.

¶

In addition, this company's experience in *corporate* matters often enables it to put an added touch to its services as transfer agent of great value to the company's officers, stockholders and attorneys.

customer. The corporation brought this suit on the contract. One defense was that as the vendor was a foreign corporation not licensed in Tennessee but doing business in that state the contract was void and being void a Federal court can not lend its aid to the enforcement thereof. The United States Circuit Court of Appeals, Sixth Circuit, affirms the judgment of the District Court, dismissing the suit. The vendor maintained storehouses in Tennessee to which carload lots were shipped; local agents solicited orders and such when taken were filled from local storehouse supplies. This, says the court, constituted the doing of intrastate business in Tennessee. The Tennessee statutes do not in terms declare void a contract made by an unlicensed foreign corporation doing intrastate business in the state but the State Supreme Court has declared such contracts void on the grounds of public policy and the United States court states "by this construction this court is bound." Concluding, the court says: "Where a state statute has declared a transaction such as is involved in the instant case void, or where the highest court of the state in construing the statute has held such contracts void, Federal courts are equally bound, and cannot lend their aid in the enforcement of a contract falling within either the terms of such statute or the construction so placed thereon by the state courts. This principle is too well established to need the citation of authorities to support it." Midland Linseed Products Co. vs. Warren Bros. Co., 46 F. (2d) 870. E. J. Walsh and Charles L. Cornelius, both of Nashville, for appellant. W. R. Manier, Jr., of Nashville. (Manier & Crouch, of Nashville, on the brief), for appellee.

Texas.

Preparing, in St. Louis, a printed catalog for a Texas company, doing some of the compiling in Texas, does not constitute "doing business" in Texas. Plaintiff-appellant, a Missouri corporation, not licensed to do business in Texas, entered into a contract in Texas, for the preparation for and sale to a Texas company of a trade catalog. The bulk of the work of preparation and the printing was done in St. Louis and delivery of the finished product was there made. In connection with the work of compiling the catalog the plaintiff sent one of its representatives to the customer's offices in Texas to assist in gathering the needed data and other material. Suit was brought to recover a portion of the purchase price of the catalogs, alleged to be due. The Supreme Court of Texas reverses the court below which sustained defendant's plea in abatement on the ground that plaintiff was, as to Texas, an unlicensed foreign corporation doing business in that state and dismissed the case. The cause is remanded for trial. The court says that the business engaged in, as referred to above, was an interstate transaction, printing being done and delivery made in St. Louis. "That appellant sent a representative from its office in St. Louis to the office of appellee to assist in the preparation of the data did not make the transaction intrastate." Numerous supporting cases are cited and briefly fact stated. Blackwell-Wielandy Company vs. Sabine Supply Company, decided March 26, 1931. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 39721.

Leasing of advertising picture films for use in Texas does not constitute "doing business" in state by foreign corporation. Here, a foreign corporation, i. e. foreign to Texas, entered into a contract outside the state with a Texas customer for the furnishing of display films (movie playlet) of an advertising nature. The films are made without the state and shipped (two shipments a month) to theatres in Texas for exhibition during the contract period (one year). Separate contracts are made with the exhibiting theatres to run the advertising films but that fact is mentioned, merely, in the consideration of this suit by the foreign film company on the contract with the advertiser. In the trial court the suit was dismissed the court sustaining defendant's demurrer on the ground that plaintiff, an unlicensed foreign corporation doing intrastate business in Texas, could not sue on the contract in the Texas courts. Under the advertising contract the advertiser was to watch carefully the screening and to notify the theatre of any irregularities and was to see to it that the films after exhibition were returned promptly to the film company. The Court of Civil Appeals of Texas (Amarillo), relying on and quoting extensively from Southwest General Electric Co. vs. Nunn Electric Co., 283 S. W. 781 (THE CORPORATION JOURNAL for October, 1926, page 233), reverses and remands for a new trial, holding, in effect, that leasing, as here, is not to be differentiated, for the purpose of determining whether the activities engaged in are interstate or intrastate, from sales, as there, "under allowable limitations and regulations" on the consignee, and that the contract and the business done thereunder with the advertiser were interstate in character. Alexander Film Co. vs. Ligon et al., 36 S. W. (2d) 313. Nordyke & Pardue, of Lubbock, for appellant. Alfred M. Scott, of Lubbock, for appellees.

Washington.

Foreign corporation, organized for the purpose, holding controlling share stock interest in domestic corporation is, without more, "doing business" in Washington. A Washington law, in terms, permits a domestic corporation, or a foreign corporation doing business in the state, to own shares of stock of Washington corporations and, in the case of such ownership, to exercise all the powers and to have all the privileges of shareholders except that of being a member of the board of trustees. Here, a Nevada corporation, organized for the purpose, among other things, of acquiring, holding, and voting the capital stock of banking and other corporations and thereby exercising control of such corporations, holding over 51 per cent of the share stock of each of two Washington state banks (and of two national banks operating in Washington) having failed to qualify as a foreign corporation in the State was threatened with proceedings against it for the penalty provided by the statute (Rem. Comp. Stats. § 3855) for failure of a corporation, foreign to Washington, that is doing business in the state, to qualify (file a copy of its charter, appoint a state agent to accept service of process, etc.). The corporation sought to enjoin the collection of the penalty on the ground that it is not "doing business" in Washington.

The Supreme Court of Washington affirms the judgment of dismissal below. The court holds that the plaintiff is "doing business" within the state saying: "We do not hold that isolated transactions, whether commercial or otherwise, performed in this state by a foreign corporation, constitute doing business within this State. But we do hold that, where a foreign corporation is formed for a particular purpose, to wit, acquiring, owning, and voting a majority of the corporate stock of other banking institutions and comes into this State and carries out the very purposes and objects for which it was created, it is 'doing business' within this State." Bankers Holding Corporation vs. Maybury, as Director of Licenses, et al., Commerce Clearing House Court Decisions Reporting Service, Requisition No. 41789. L. B. Donley, of Aberdeen, for appellant. The Attorney General and Lester R. Parker, Assistant, for respondents.

Taxation

Arkansas.

Interstate ferry not liable for state ferry-license tax. The Arkansas statutes (Act 181, Laws of 1929) provide for the imposition of a license tax, based on gross receipts, on any privately owned ferry in the state, for the privilege of operating. Appellee is a Delaware corporation, operating a ferry in interstate commerce exclusively, between Mississippi and Arkansas. Its boats are registered in Louisiana; all of its property is in Mississippi; it rents dockage on the Arkansas side of the Mississippi for ferry terminal purposes only, the lessor paying the taxes. The company has made no report as required by the statute and has not paid the license tax. It pays no taxes in Arkansas. The Arkansas Commissioner of Revenue issued an order directed to a sheriff to levy on and sell the company's property or "so much thereof as may be necessary" for the payment of the tax, penalty, cost, etc. Appellee filed its complaint against the Commissioner and the sheriff praying for a restraining order and prevailed below. The Supreme Court of Arkansas affirms, holding, after saying that "there is no contention that the state would not have the right to make reasonable regulations and inspection for the benefit of the public," that "the tax levied by the act under consideration is a tax on the right to take on and discharge freight and passengers and is therefore a tax or burden on interstate commerce,"—and so, is unconstitutional. Gates, Commissioner vs. Greenville Bridge & Ferry Co., decided March 30, 1931, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 40399. Hal L. Norwood, Atty.-Gen., and Walter L. Pope, Assistant, for appellant. Wynn & Hafter, of Greenville, Miss., and E. P. Toney and N. B. Scott, both of Lakeville, for appellee.

Maryland.

Taxing shares of stock of a domestic corporation held by nonresidents of the taxing state. The tax here involved is one assessed against a Maryland power company on its capital stock "which 'shall

be collected from' the corporation, and which, when paid, may be charged to stockholders, and is a lien upon their stock," all of such stock being owned by a Pennsylvania corporation with its only place of business in that commonwealth. The tax was sustained by the Maryland Court of Appeals (151 Atl. 39). On appeal the United States Supreme Court, dismisses, saying that "the tax was sustained on an adequate state ground and it is unnecessary to consider the objections made to it on constitutional grounds. None of them is directed at the statute viewed, as the state court has construed it, as imposing a tax on the personal property of appellant." Continuing (and hence this present paragraph —appellant having challenged the taxing statute because, inter alia, "it imposes a tax on intangible shares of stock owned by a non-resident, which have a situs, for purposes of taxation, only at the owner's residence"), the court says: "Nor is it necessary on this record to consider how far any objection made may be availed of by the non-resident stockholder, in the event of an attempted enforcement of the provisions of the statute which authorize the tax to be charged to stockholders, and create a lien upon the stock." The Susquehanna Power Co. vs. State Tax Commission of Maryland, 51 S. Ct. 436. Wm. Clarke Mason, of Philadelphia, Pa., and Fred R. Williams, of Bel Air, for appellant. Wm. L. Marbury, Jr., of Baltimore, and Chas. H. MacNabb, of Cardiff, for appellee.

North Carolina.

Tax on so much of foreign corporation's net income as is determined by statutory proportioning method held unreasonable and arbitrary in particular case. The North Carolina income tax law provides that in the case of a foreign corporation deriving profits principally from the ownership, sale or rental of real estate or from the manufacture, purchase, sale of, trading in, or use of tangible personal property, the tax is to be imposed on a proportion of its entire net income equal to the proportion the fair cash value of its real estate and tangible personal property in the state is to the fair cash value of its entire real estate and tangible personal property. In an action looking to readjustment the Supreme Court of North Carolina sustained the taxes here, for a series of years, as based on the computations of the State Commissioner of Revenue, made, admittedly, in accord with the law provisions, imposed on a New York corporation engaged in the business of tanning, manufacturing and selling belting and other heavy leathers, having a manufacturing plant in North Carolina and a sales office in New York. The business is national and international. The determined proportions were, respectively, 83%, 85%, 66%, 85%. The lower court says the evidence offered by the petitioner tends to show the average proportion for the four years to be 17%, such computation being based on the theory of three income sources, namely, buying profit, (no buying was done in North Carolina), manufacturing profit, and selling profit. Appellant's evidence was stricken by the trial court; the state Supreme Court sustains the striking but said that if the evidence were deemed to be competent, it would not change the result.

On appeal to the United States Supreme Court that court says "the case may therefore be viewed as though the evidence had been received and held to have no bearing on the validity of the statute." "Undoubtedly, the enterprise of a corporation which manufactures and sells its manufactured product is ordinarily a unitary business, and all the factors in that enterprise are essential to the realization of profits. The difficulty of making an exact apportionment is apparent and hence, when the state has adopted a method not intrinsically arbitrary, it will be sustained until proof is offered of an unreasonable and arbitrary application in particular cases." In conclusion the court says: "For the present purpose, in determining the validity of the statutory method as applied to appellant, it is not necessary to review the evidence in detail, or to determine as a matter of fact the precise part of the income which should be attributable to the business conducted in North Carolina. It is sufficient to say that, in any aspect of the evidence, and upon the assumption made by the state court with respect to the facts shown, the statutory method, as applied to the appellant's business for the years in question operated unreasonably and arbitrarily, in attributing to North Carolina a percentage of income out of all appropriate proportion to the business transacted by the appellant in that State. In this view, the taxes as laid were beyond the State's authority." Remanded. Hans Rees' Sons, Inc. vs. State of North Carolina, 51 S. Ct. 385. Louis H. Porter and F. Carroll Taylor, both of New York City, for appellant. Dennis G. Brummitt, of Raleigh, for appellee.

Tennessee.

State taxation of interstate bus lines being valid only if compensatory such a tax proportioned to carrying capacity is invalid. The Tennessee law here in question, Chapter 89, Laws of 1927, imposes, by § 4, a privilege tax on concerns operating interstate motor busses on the highways of the state, graduated according to carrying capacity. For each vehicle seating more than twenty and less than thirty passengers the tax is $500. An Ohio corporation, operating across Tennessee in interstate commerce exclusively, being charged with a tax on eight such busses questioned the validity of the taxing act on the ground that it violates the commerce clause of the Federal constitution. The Supreme Court of Tennessee sustained the tax. On appeal the United States Supreme Court (Mr. Justice McReynolds dissenting) reverses, holding the tax invalid. The court says that while a state may not lay a tax on the privilege of engaging in interstate commerce it may impose on motor vehicles, even if engaged in interstate commerce exclusively, as compensation for the use of the public highways, a charge which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon, but it must appear affirmatively that the charge is for the purposes stated, as in the case of a mileage tax or as when there is express allocation of the proceeds of the tax to highway purposes, or otherwise. "But the mere fact that the tax falls upon one who uses the highway is not enough to give to it presumptive validity." It is said that a close examination of the statute

"makes it clear that the charge was imposed not as compensation for the use of the highways but for the privilege of doing the interstate bus business." In conclusion, and answering the suggestion that a tax on busses graduated according to carrying capacity is common and is a reasonable measure of compensation for use of the highways, the court says that such a measure is often applied in taxing motor vehicles engaged in intrastate commerce, perhaps as a legitimately imposed occupation tax, "but since a State may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes," and that as the present tax is proportioned solely to the earning capacity of the vehicle "there is here no sufficient relation between the measure employed and the extent or manner of use, to justify holding that the tax was a charge merely as compensation for the use of the highways by interstate busses." Interstate Transit, Inc. vs. Dick Lindsey, County Court Clerk, 51 S. Ct. 380. J. Carlton Loser, of Nashville, and Thomas L. Tallentire, of Cincinnati, O., for appellant. W. F. Barry, Jr., of Nashville, for appellee.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

United Light and Power Company
Lerner Stores Corporation
Alleghany Corporation
The Chesapeake Corporation
Postal Telegraph and Cable Corp.
Allis-Chalmers Mfg. Co.
General Motors Management Corp.
Collins & Aikman Corporation
Coty, Inc.
Ingersoll-Rand Company
Universal Pipe & Radiator Co.
Long-Bell Lumber Corporation
United States Shares Corp.
Bayuk Cigars, Incorporated
Associated Rayon Corporation
Niagara Share Corporation of Md.
Continental Oil Company
Standard Power & Light Corp.
United Dyewood Corporation
American Snuff Company
P. Lorillard Company
Vulcan Detinning Company
International Telephone and Telegraph Corporation
International Railways of Central America

Some Important Matters for June, July, August, September and October

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Anti-trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.
Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.
Annual Certificate of Condition due on or before August 15.—Domestic Corporations.

CALIFORNIA—Franchise Tax based on net income. Second installment due on or before September 15 in case of a calendar year return.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax due on or before September 1.—Domestic and Foreign Corporations.
Annual Report due on or before August 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

IDAHO—Annual Statement due between July 1 and September 1.—Domestic and Foreign Corporations.
Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual License Fee or Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.
Annual Report and License Fee to Industrial Board due in July.—Domestic and Foreign Corporations.

IOWA—Annual Report due between the first day of July and the first day of August.—Domestic and Foreign Corporations.
Additional statement due at the time of making the Annual Report in July.—Foreign Corporations.

MAINE—Annual Franchise Tax due September 1, delinquent one month later.—Domestic Corporations.

MARYLAND—Franchise Tax due on or before August 1.—Domestic and Foreign Corporations.

MICHIGAN—Annual Report and Franchise Tax due during July or August.—Domestic and Foreign Corporations.

MINNESOTA—Sworn Statement of Capital Stock due biennially on July 1 of each odd-numbered year.—Foreign Corporations.

MISSISSIPPI—Anuual Report to Factory Inspector due in July.—Domestic and Foreign Corporations.
Annual Franchise Tax Report and Payment due on or before July 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July.—Domestic and Foreign Corporations.

MONTANA—Annual License Tax based on Net Income due between June 1 and June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due during July.—Domestic and Foreign Corporations.

Annual Statement due on or before September 15.—Foreign Corporations.

NEVADA—Annual List of Officers due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax due in August.—Domestic Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3IT—Art. 9-A, Tax Law) due on or before July 1.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Annual Franchise Tax due on or before October 1.—Domestic and Foreign Corporations.

Capital Stock Report to determine amount of franchise tax due on or before July 1.—Foreign Corporations.

NORTH DAKOTA—Corporation Report due during July.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

OKLAHOMA—Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual License Tax Report and Payment due on or before July 31.—Domestic and Foreign Corporations.

OREGON—License Fee due between July 1 and August 15.—Foreign Corporations.

Annual License Fee due within 30 days after July 15.—Domestic Corporations.

Annual Statement due during June, delinquent August 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due July 1, delinquent after July 15.—Domestic and Foreign Corporations.

TENNESSEE—Annual Report and Franchise Tax due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second and Third Installment Income Tax due June 15 and September 15, respectively.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Annual License Tax report due on or before July 1.—Domestic and Foreign Corporations.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—Tax Statements due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign and non-resident Domestic Corporations.

WYOMING—Annual statement and license tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Amendments to Delaware Corporation Law, 1931. For convenience of counsel, The Corporation Trust Company has published in pamphlet form the 1931 amendments to the Delaware law, showing the full text of all parts amended and indicating by brackets the parts repealed and by italics the new matter added.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930). A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.